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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,282	12/15/2003	Hiroshi Nakahata	AA556C	4285

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EXAMINER	
HAND, MELANIE JO	
ART UNIT	**PAPER NUMBER**
3761	

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03/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/736,282	NAKAHATA ET AL.	
	Examiner	Art Unit	
	MELANIE J. HAND	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed December 10, 2007 have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The combined teaching of Nakahata and Malowaniec meets all of the claim limitations of independent claim 1. The Office acknowledges that Nakahata teaches discontinuities in the topsheet,hence the introduction of the Malowaniec reference, which teaches two layers, a chassis layer 12 and topsheet 13 that both have discontinuities, thus the instant chassis layer remedies that particular deficiency of Nakahata. Since both Nakahata and Malowaniec teach a chassis layer attached to a top layer, both teach a topsheet with discontinuities as recited in claim 1, and Malowaniec teaches that the discontinuities lend extensibility to an otherwise inelastic chassis layer and topsheet to provide a more comfortable fit to the wearer, there is a motivation to combine the teachings of Nakahata and Malowaniec. As to applicant’s argument that Nakahata does not teach an extensibility controlling means of the chassis layer, the rejection of claim 1 is restated herein to clarify that the chassis layer, while elastically extensible, is limited in its extensibility by the elongation to break that is an inherent property of the chassis layer material. Claim 1 does not recite sufficient structure or features to distinguish from the extensibility controlling means that flows inherently and necessarily from the teachings of Nakahata in the form of the inherent elongation to break of the instant chassis layer material.

2. Applicants' arguments with regard to dependent claims 2-6 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

3. With respect to arguments regarding claim 8: Applicant is referred to Col. 3, lines 37-45 of Nakahata, where Nakahata specifies that in embodiments of the instant article where the article has a holder and liner, the chassis layer 22 comprises the holder, which is an outer cover, attached to the liner, which comprises the topsheet, backsheet and core. It is noted that the fact that what Nakahata calls a chassis layer comprises the topsheet 24, core and backsheet 26 does not preclude the holder taught by Nakahata from rendering the claimed chassis layer unpatentable. The holder has the same relative placement, position and purpose within the diaper that the claimed chassis layer does. Thus Nakahata teaches a liquid-impervious sheet in the form of backsheet 26 between the absorbent core 28 and the chassis layer in the form of the holder or router cover. The rejection of claim 1 has been restated herein to clarify this.

4. As to applicant's arguments with respect to claim 16 regarding the lack of teaching or suggestion in Nakahata of a plurality of discontinuities, this argument has been addressed *supra* with respect to applicant's arguments regarding the rejection of claim 1. As to the balance of applicant's arguments regarding the amendment to claim 16, the newly added limitation "to strengthen the edges" constitutes functional language that is given little patentable weight herein. The combined teaching of Nakahata and Malowaniec meets all of the structural limitations of claim 16 and claim 1 from which it depends regarding the material of the chassis layer and the discontinuities and the manner of the claimed treatment, therefore the edges of the discontinuities of the combined teaching of Nakahata and Malowaniec are necessarily treated in such a manner as to strengthen the edges of the instant discontinuities.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakahata (U.S. Patent No. 5,873,868) in view of Malowaniec (U.S. Patent No. 6,049,915).

With respect to **claim 1:** Nakahata teaches an absorbent article 20 having a pair of longitudinal side edges 50 and a first end edge 52, a second end edge 52, a first waist panel 46 adjacent to the first end edge 52, a second waist panel 44 adjacent to the second end edge 52, a crotch panel 48 positioned between the first and second waist panels, and a side panel 30 extending laterally outwardly from the first or second waist panel, the absorbent article 20 comprising a liquid pervious topsheet 24, an absorbent core 28 disposed underneath the topsheet 24, and a chassis layer 22, wherein the first or second waist panel 46,44 comprises a portion of the chassis layer 22. Applicant is referred to Col. 3, lines 37-45 of Nakahata, where Nakahata specifies that in embodiments of the instant article where the article has a holder and liner, the

chassis layer 22 comprises the holder, which is an outer cover, attached to the liner, which comprises the topsheet, backsheet and core. The holder has the same relative placement, position and purpose within the diaper that the claimed chassis layer does. Thus, Nakahata teaches a liquid-impervious sheet in the form of backsheet 26 between the absorbent core 28 and the chassis layer in the form of the holder or router cover. the topsheet 24 including a plurality of spaced discontinuities 206 regularly disposed in at least a portion of the first or second waist panel 46,44 such that when the waist panel is subject to tension the discontinuities 206 provide openings that extend through the topsheet 24 thereby providing said topsheet 24 with extensibility in the transverse direction; and an extensibility controlling means in the form of an elastically extensible chassis layer 22 to control the extensibility of the topsheet 24, wherein the extensibility controlling means inhibits the topsheet layer 24 from extending beyond extensibility causing breakage of said topsheet. (Col. 3, lines 13-67, Col. 10, lines 11-13, Col. 11, lines 1-21, Col. 12, lines 16-22)

Nakahata teaches that the discontinuities 206 are present in topsheet 24 and thus does not teach that the discontinuities are present in chassis layer 22. Malowaniec teaches an absorbent article having an absorbent core in the form of elastic layer 11 disposed between topsheet 13, and a chassis layer 12. Both chassis layer 12 and topsheet 13 include a plurality of spaced discontinuities 14 regularly disposed in at least a portion of the first or second waist panel (inasmuch as the incisions occur throughout the entire layer 12) such that when the waist panel is subject to tension the discontinuities 14 provide openings that extend through the chassis layer 12. The limitation of providing the chassis layer with extensibility in the transverse direction flow necessarily from the teachings of Malowaniec as the article of Malowaniec meets the claim limitations that pertain to the discontinuities and to the extensibility controlling means (layer 11 of Malowaniec). Since Malowaniec teaches that both topsheet 13 and chassis layer 12

have discontinuities that lend extensibility to the otherwise inelastic material of topsheet 13 and chassis layer 12, and extensibility provides a more comfortable fit to the wearer during use, it would be obvious to one of ordinary skill in the art to modify the article of Nakahata so as to have discontinuities located in the chassis layer as well as the topsheet as taught by Malowaniec to provide extensibility to the chassis layer to allow a more comfortable fit to the wearer. ('915, whole document)

\With respect to **claim 2:** The extensibility causing breakage of the chassis layer is between 10-500%, which overlaps the range of more than 20 %. (Col. 14, lines 10-12)

With respect to **claim 3:** Nakahata teaches the same materials for topsheet 24 as those set forth in the claimed disclosure. Thus, while Nakahata is silent regarding a percentage elongation of the topsheet associated with a tension force of 125 grams/25mm, this percentage elongation is considered herein to be an inherent property of the topsheet 24. The burden is therefore upon the applicant to show that these properties are not inherent properties of the topsheet taught by Nakahata by demonstrating that the instant invention and the claimed invention are not equivalent. See *In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980)*

With respect to **claim 4:** The extensibility controlling means is disposed in the first or second waist panel 46,44 in the transverse direction across at least the transverse width of the plurality of spaced discontinuities 206. (Fig. 2, Col. 7, line 65 – Col. 8, line 9, Col. 11, lines 1-8)

With respect to **claim 5:** The extensibility controlling means (backsheet 26) is present along, and thus disposed along, the end edge. (Col. 7, line 65 – Col. 8, line 9)

With respect to **claim 6:** The extensibility controlling means is a stretchable elastic material, i.e. the elastically extensible backsheet 26. (Col. 4, lines 33-36)

With respect to **claim 7:** The chassis layer 22 comprises a liquid impervious material. (Col. 3, lines 32-35, Col. 4, lines 5-12)

With respect to **claim 8:** The absorbent article 20 comprises a liquid impervious sheet 26 disposed between the absorbent core and the chassis layer where the chassis layer is a holder and the diaper comprises a holder and liner wherein the liner contains the topsheet 24, backsheet 26 and core 28. (Col. 3, lines 39-43)

With respect to **claims 9,10:** Nakahata teaches that the core can be of various shapes and sizes. (Col. 7, lines 5-12) Thus while Nakahata does not explicitly teach that the absorbent core 28 does not extend into the first or second waist panel in which the discontinuities 206 are provided, it would be obvious to one of ordinary skill in the art to modify the article of Nakahata to meet this limitation, as the core is substantially inelastic and would inhibit the elasticity of the topsheet 24 and may interfere with the function of extensibility controlling means 26, which is contrary to one of the problems sought to be solved by Nakahata, i.e. to provide an elastically extensible topsheet 24.

With respect to **claim 11:** The discontinuities 206 are slits. (Col. 11, lines 5-9)

With respect to **claim 12:** The discontinuities 206 comprise a plurality of cuts wherein the cuts comprise rectilinear cuts. (Col. 11, lines 5-9)

With respect to **claim 13:** The discontinuities 206 are regularly disposed as a pattern 204 in the chassis layer 22. (Col. 11, lines 1-9)

With respect to **claim 14:** The discontinuities 206 are oriented such that the discontinuities extend in a longitudinal direction. (Fig. 2, Col. 11, lines 9-13)

With respect to **claim 15:** The discontinuities 206 are aligned in the longitudinal direction in an array of columns and rows seen in Fig. 2 such that the discontinuities form a plurality of laterally spaced columns 208 as seen in Fig. 4 which extend in the longitudinal direction. (Col. 11, lines 16-21)

With respect to **claim 16:** The discontinuities 206 are located in the topsheet 24 which is treated to be hydrophobic and thus the discontinuities 206 comprise a plurality of edges wherein the edges are treated. (Col. 6, lines 9-12) The limitation ”to strengthen the edges” constitutes functional language that is given little patentable weight herein. The combined teaching of Nakahata and Malowaniec meets all of the structural limitations of claim 16 and claim 1 from which it depends regarding the material of the chassis layer and the discontinuities, and the manner of the claimed treatment, therefore the edges of the discontinuities of the combined teaching of Nakahata and Malowaniec are necessarily treated in such a manner as to strengthen the edges of the instant discontinuities.

With respect to **claims 17,18:** The discontinuities 206 are arranged such that the application of a tensile force to the chassis layer results in a plurality of equal area openings having an area from about 1 mm^2 to about 2500 mm^2. (Col. 12, lines 16-22)

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
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